

CLARE E. CONNORS #7936
United States Attorney
District of Hawaii

MICHAEL D. NAMMAR
MARK A. INCIONG CA BAR #163443
W. KEAUPUNI AKINA #11565
Assistant U.S. Attorneys
Room 6100, PJKK Federal Building
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958
Email: Michael.Nammar@usdoj.gov
Mark.Inciong@usdoj.gov
Keaupuni.Akina@usdoj.gov
Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL J. MISKE, JR., (01)

aka "Bro,"

JOHN B. STANCIL, (02)

DELIA FABRO-MISKE, and (12)

JASON K. YOKOYAMA, (13)

Defendants.

CR. NO. 19-00099 DKW-KJM

UNITED STATES' MOTION *IN LIMINE* TO BIFURCATE EXPERT
"CAST" TESTIMONY;
CERTIFICATE OF SERVICE

UNITED STATES' MOTION *IN LIMINE* TO
BIFURCATE EXPERT "CAST" TESTIMONY

The United States moves for permission to call Kent, Washington Police Department Technical Detective Tyson Sagiao to testify at two separate times during its case-in-chief. Detective Sagiao is assigned as a Task Force Officer to the FBI-Seattle Division's Safe Streets Task Force and is also a member of the FBI's Cellular Analysis Survey Team ("CAST"). Detective Sagiao will provide expert testimony regarding his analysis of pertinent historical cell site location data and call detail records previously produced to the defense in discovery.

It is anticipated that Detective Sagiao will discuss how the data and records were used to create two cell site maps documenting various cellular phone locations in relation to two separate and distinct series of events. Sagiao will then explain in detail what the created mapping demonstrates.¹

Given the two separate and distinct events about which Detective Sagiao will testify, the United States seeks permission to call Detective Sagiao at two different points in the prosecution's case-in-chief so that he may testify in concert with other relevant evidence that will be introduced regarding the same incident. The CAST information is highly technical, thus requiring expert testimony, and will be confusing to the jury if introduced at a different time, potentially months apart, than the other evidence corresponding to the event in question.

¹ Pursuant to Rule 16(a)(1)(G)(i), formal notice of Detective Sagiao's expected expert testimony is forthcoming and will be provided to the defense on or before November 27, 2023.

The proposed bifurcation of the CAST expert testimony will not prejudice the defendants in any way and will allow the case to be presented in a clear and coherent manner to the jury.

This Court has broad discretion regarding the presentation of evidence during trial. *Fed. R. Evid. 611*. (“The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to . . . make those procedures effective for determining the truth.” “Permission to recall [a] witness [i]s clearly within the sound discretion of the court.” *Kuhn v. United States*, 24 F.2d 910, 914 (9th Cir. 1928); *accord United States v. Dent*, 984 F.2d 1453, 1463 (7th Cir. 1993) (“Permitting the recall of a witness is within the sound discretion of the district court.”)).

Here, the Court should exercise its discretion and allow the United States to call Detective Sagiao at two different points in its case-in-chief. By doing so, the jury will receive the evidence in a clear, logical and efficient manner.

//

//

//

//

//

Moreover, the two segments of Detective Sagiao's testimony do not overlap and the defendants will not be prejudiced in any manner.

DATED: November 13, 2023, at Honolulu, Hawaii.

CLARE E. CONNORS
United States Attorney
District of Hawaii

By /s/ Mark A. Inciong
MICHAEL D. NAMMAR
MARK A. INCIONG
W. KEAUPUNI AKINA
Assistant U.S. Attorneys

CERTIFICATE OF SERVICE

I hereby certify that, on the date noted below, the true and correct copy of
the foregoing was served on the following at their last known address:

Served Electronically through CM/ECF:

Lynn Panagakos, Esq.
Michael Jerome Kennedy, Esq.

Attorneys for Defendant
MICHAEL J. MISKE, JR.

Walter J. Rodby, Esq.
Terri L. Fujioka-Lilley, Esq.

Attorneys for Defendant
JOHN B. STANCIL

Marcia Morrissey, Esq.
Donovan Odo, Esq.

Attorneys for Defendant
DELIA FABRO-MISKE

William A. Harrison, Esq.

Attorney for Defendant
JASON K. YOKOYAMA

DATED: November 13, 2023, at Honolulu, Hawaii.

/s/ Tiani Kaneakua

U.S. Attorney's Office
District of Hawaii